THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 21040 OF 2005

Date: 09.06.2006

C. Ravi Varma.

… Petitioner.

And

Tirumala Tirupathi Devasthanam, Tirupathi rep.,by its Executive Officer.

… Respondent.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 21040 OF 2005

ORAL ORDER:

In this writ petition the action of the respondent in seeking to conduct enquiry pursuant to the memorandum of charge in Roc.No.C1/1243/CE/98 dated 20.10.1998 is questioned as arbitrary and illegal.

Facts to the extent necessary are that the petitioner joined the service of

Tirumala Tirupati Devastanam (T.T.D) in1979 as a Supervisor which post was re-designated as Assistant Engineer. The Anti Corruption Bureau (ACB) initiated proceedings in C.C.11 of 1992 on the file of the Special Judge for SPE & ACB cases, Nellore on the allegation that the petitioner, along with eight others, was involved in payment of excess conveyance charges for transporting M.S. Rails from Alipiri to the work spots. The petitioner was placed under suspension pending enquiry on 20.7.1983. Aggrieved by the action of the respondent, in placing him under suspension, the petitioner approached this Court and this Court directed the respondent to reinstate the petitioner pending filing of the charge sheet by the A.C.B.

Consequent upon a charge sheet being filed, the petitioner was again placed under suspension. The criminal case which was initially instituted at Hyderabad was subsequently transferred to the Court of the Special Judge for SPE & ACB Cases, Nellore and was numbered as C.C.11 of 1992. Petitioner approached this Court again seeking to have the subsequent order of suspension set aside and this Court directed that he be reinstated into service pending final orders being passed in the proceedings initiated by the A.C.B. The petitioner was acquitted in C.C.11 of 1992 by judgment dated 11.8.1994. Subsequent thereto, vide proceedings dated 25.2.1995, the period of suspension from 23.8.1988 to 22.11.1991 was regularized and the pending increments were released to the petitioner. It is the petitioner's case that it was specifically ordered in the said proceedings that further action on the individuals in the case be dropped. However, subsequently by proceedings dated 16.12.1988, the Joint Executive Officer was appointed as enquiry officer to conduct an enquiry against two employees one Sri N. Prabhakara Murthy and the petitioner herein whereas no action was taken against the other employees including one Sri P. Mohan Rao, who had by then retired from service. It is the petitioner's case that not only was no disciplinary action initiated against Sri P. Mohan Rao but he was also promoted as Superintending Engineer, vide proceedings dated 25.2.1995.

On a second enquiry officer being appointed, an enquiry notice was issued on 14.5.1999 both to Sri N. Prabhakara Murthy and the petitioner herein. Sri N.Prabhakara Murthy filed W.P.No.15018 of 1999 questioning the very same enquiry initiated pursuant to Memorandum of charge in

Roc.No.C1/1243/CE/98 dated 20.10.1998 and this court, by order dated 8.4.2004, allowed the writ petition and set aside the said memorandum of charge. It is the case of the petitioner that though enquiry proceedings were initiated both against Sri N.Prabhakara Murthy and himself, under the very same memorandum of charge and the allegations leveled therein against the petitioner and Sri N. Prabhakara Murthy are one and the same, even during the pendency of disciplinary proceedings Sri N. Prabhakara Murthy was promoted to the post of Executive Engineer. Similarly all other officers against whom similar acts of misconduct was alleged were promoted during the pendency of the enquiry proceedings. However the petitioner alone was singled out and was denied promotion.

In the counter affidavit, filed by the then Joint Executive Officer, T.T.D, it is admitted that in accordance with the interim order dated 2.9.2000 in W.P.M.P.18472 of 1999 in W.P.15018 of 1999 and the judgment of this Court in W.P.15018 of 1999 dated 14.10.2004, the pensionary benefits of Sri N.Prabhakara Murthy were settled and paid. It is stated that since the petitioner continues to remain in service, departmental action is being pursued against him. It is stated that the enquiry was completed and even the enquiry report was submitted on 6.5.2005 and since the enquiry report revealed that it was not conducted according to procedure and had been concluded without summoning the reporting officer, the presenting officer and the witnesses, a re-enquiry was ordered on 18.9.2005 appointing the Special Grade Deputy Executive Officer as the enquiry officer. Reference is made in the counter affidavit to G.O.Ms.No.104 dated 30.1.1991 wherein instructions were issued for consideration of claims for promotions of officers who are facing enquiry in the departmental proceedings. According to the respondent, since the case of such persons, against whom disciplinary action is pending, is to be considered by the Departmental Promotion Committee (D.P.C), the case of the petitioner was to be placed before the D.P.C. which alone was entitled to take a decision in this regard. While the incidents, which form the basis of the charge sheet, relate to the year 1983, respondent would contend that the criminal case ended only in February, 1995 and since the petitioner was acquitted by the criminal court on benefit of doubt, the respondent is entitled to initiate action and

proceed against him departmentally. It is also stated that the T.T.D Board, by resolution No.954 dated 4/5.1.1995, had merely resolved not to continue the criminal case by way of appeal and that the said resolution did not prohibit disciplinary action being taken.

Sri A.Sudershan Reddy, learned counsel for the petitioner, would submit that pursuant to the order of this Court in W.P.15018 of 1999 dated 8.4.2004, the respondent implemented the order passed by this Court as against Sri N.Prabhakara Murthy and dropped all proceedings consequent upon the charge sheet issued in 1998. Learned Counsel would submit that since the charges levelled against both Sri N. Prabhakara Murthy and the petitioner were verbatim extracts of each other and a common enquiry was initially held against both of them and in as much as the very same charge sheet was quashed by this Court, in W.P.15018 of 1999 by order dated 8.4.2004, the charge sheet in case of the petitioner is also liable to be quashed.

The short question which requires consideration is whether the order of this Court in W.P.15018 of 1999 dated 8.4.2004, whereunder the charge sheet issued against Sri N.Prabhakara Murthy was quashed, would apply to the petitioner also. This Court in W.P.No.15018 of 1999 held as under:

".....The petitioner also assails the charge memo on various other grounds including that even at the stage of the charge memo there is a pre-judgment of the issue. One paragraph of the impugned charge memo is relevant and material in the context of the grievance of the petitioner and that there is a pre-judgment of his conduct even at the stage of initiation of departmental proceedings. This paragraph reads as under:

"It is very clear beyond shadow of doubt that Sr N.Prabhakaraa Murthy, the then Assistant Engineer, had indulged in illegal and ignoble acts, with an ulterior motive, to make wrongful personal illegal gains and caused huge pecuniary loss to a tune of Rs.7,54,918.34 to T.T.Ds, while executing the work of fixing M.S. Rails on both the Ghat roads, leading from Alipiri to Tirumala, during the year 198183"

After the above recording of a satisfaction by the respondents 'beyond a shadow of doubt' as to the misconduct of the petitioner and the employment of choice epithets describing his conduct the charge memo proceeds to record the ritualistic expression of an intention to conduct an enquiry.

On a true and fair construction of the contents of the charge memo the conclusion is irresistible that the respondent has already made up its mind "beyond a shadow of doubt" as to the guilt of the petitioner in respect of the species of misconduct he has been charged with by the impugned charge memo. Such prejudgment of the petitioner's culpability as is evident from the expressions employed in the charge

memo is inconsistent with the neutrality expected of a disciplinary authority or an enquiry officer. The apprehension of the petitioner as to the pre-judgment of the issue is a legitimate apprehension fortified by the infelicitous language employed in the charge memo. The impugned charge memo beseeches invalidation as wholly inconsistent with the principles of fair play.

In the circumstances the impugned charge memo is set aside. The writ petition is accordingly allowed." (emphasis supplied)

The portion of the charge memo, extracted in the order of this Court in W.P.15018 of 1999, is extracted verbatim in the charge sheet issued to the petitioner herein also. It is useful to extract the relevant portion of the charge memo issued to the petitioner which reads as under:

"Therefore, it is very clear beyond shadow of any doubt that Sri C.Ravi Varma the then Supervisor had indulged in unlawful and depraved acts, with ulterior motive, to make personal illegal gains and caused huge pecuniary loss to a tune of Rs.7,54,918-34 ps to T.T.D while executing the work of fixing M.S.Rails on both Ghat Roads, leading from Alipiri to Tirumala during the year 1981-83"

It is clear that this portion of the charge memo issued to the petitioner is more or less, verbatim extract of the charge memo issued to Sri N.Prabhakara Murthy. This Court, in W.P.No. 15018 of 1999 dated 08.04.2004, held that the contents of the charge memo issued to Sri N. Prabhakara Murthy would reveal that the respondents had already made up their mind "beyond a shadow of doubt" as to his guilt in respect of the species of misconduct he had been charged with by the impugned charge memo and that such a prejudgment was inconsistent with the neutrality expected of a disciplinary authority or an enquiry officer. This Court held that the petitioner's apprehension as to the prejudgment of the issue was a legitimate apprehension and that the impugned charge memo was wholly inconsistent with the principles of fair play.

The observations of this Court in W.P.15018 of 1999 dated 8.4.2004 squarely applies to the case of the petitioner herein also. Consequently the impugned charge memo is also liable to be quashed.

The writ petition is accordingly allowed. However, in the circumstances, without costs.

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9-6-2006

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